Referring again to Chapter 207 of the Acts of 1937, under which the housing authorities were created, the words used in stating that the housing authority shall be "a body corporate and politic assumed a latent ambiguity when compared with other legislation which shows that the governing board of the State Highway Department and other non-independent agencies are also granted, this seeming separate entity by use of these identical words."

From these somewhat confusing authorities it becomes clear that organizations similar to housing authorities have chameleon-like qualities of changing their attributes depending on the situation and light under which they are examined. A general study of the various acts dealing with housing authorities shows a very close link between the housing authority and the regular political sub-division with which they are associated. It seems reasonable to say that unless another view is necessary they are treated as a city department exercising a proprietary function. The wording for inclusion under social security benefits previously quoted would lend credence to the belief that the legislature intended housing authorities to be so treated for the purposes of social security.

Therefore, in answer to your question in regard to all questions having to do with social security, it is my opinion that housing authorities should be considered to be proprietary functions of the associated municipality.

OFFICIAL OPINION NO. 65

October 10, 1952.

Mr. Wilbur Young,
Superintendent of Public Instruction,
227 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of September 20, 1952 has been received, in which you request an official opinion on the following questions:

> "1. Is it lawful to substitute an agreement of facts when the same are known to the agency to not include

all of the proceedings of the hearing held by the County Superintendent of Schools of Adams County?

"2. Is it lawful for the foregoing stipulation of facts to be accepted by the agency in lieu of the provisions of Section 3, Chapter 365 of the Acts of 1949?

"3. If no hearing is held and testimony taken by the agency with a responsible person taking such testimony in shorthand or stenotype and made available to all interested parties and an appeal is taken, what testimony would be acceptable under this Act by a court of competent jurisdiction?

"4. Can an agreement of facts be substituted for the provisions as prescribed by Section 9, Chapter 365 of the Acts of 1949?

"5. Can an agreement of facts be substituted by the agency for all of the provisions as set out in the Administrative Adjudication Act, same being Chapter 365 of the Acts of 1947?"

You state you are requesting this opinion as to the duties to make a decision on an attendance case after the county superintendent of schools has referred same to you under the provisions of Section 7, Chapter 238, Acts of 1949. You further state that on the 4th day of September, 1952, a stipulation of facts was received by your office from Glen B. Custard, Superintendent of the Adams County Schools, E. M. Webb, Superintendent of the Berne-French Township School, John Girod, Berne, Indiana, Cletus Christner, Berne, Indiana, Route 2, and Noel Wengerd of Berne, Indiana, in regard to the Compulsory Attendance Law as it applies to Amish Private School No. 1, located in Wabash Township, Adams County.

This office is further aware of the facts, due to prior conferences with representatives of your office, that the above stipulation of facts was forwarded to you in answer to a notice to all parties involved that in lieu of bringing the witnesses to Indianapolis, the parties could enter into a stipulation of facts, to be signed by all parties concerned, covering the matters in issue. Your notice further stated that in the event that they could not agree to submit this matter on a

stipulation of facts that a notice for hearing would be given and a formal hearing held under the prescribed provisions of the Administrative Adjudication Act of 1947 (63-3301 *et seq.*, Burns' 1951 Repl.) Since receiving this stipulation of facts your office has advised this office further that some of the parties entering into the stipulation have insisted that a formal hearing is necessary, whether this is for the purpose of introducing additional evidence is not clear.

Section 7, Chapter 238, Acts of 1949, same being Section 28-505h, Burns' 1951 Supp., same being a Section of the Compulsory Education Law of 1949, reads as follows:

> "Any parent claiming to be providing instruction to a child equivalent to that provided by the public school, may be served with notice to appear before the superintendent to establish the equivalence of such instruction. The decision of such superintendent shall be final for all purposes unless the parent shall within ten (10) days thereafter file with the superintendent of public instruction, a request for a review of such decision. All proceedings before the superintendent of public instruction shall be had in accordance with the Administrative Adjudication Act of 1947, and all decisions by said superintendent shall have the effect as and shall be subject to judicial review in the manner as is prescribed in said act. The superintendent of public instruction may refer said matter to any employee under his control or direction for the hearing of evidence and making of proposed findings of fact. In the absence of any such notice to appear and proceedings thereon, the instruction provided by the parent in lieu of school attendance and claimed by such parent to be equivalent to that provided by the public school shall be prima facie presumed to be equivalent."

Your particular reference to Sections of the statute contained in your second, fourth and fifth questions are directed to Chapter 365, Acts of 1947; Section 63-3001 *et seq.*, Burns' 1951 Repl., being the Administrative Adjudication Act heretofore referred to.

It is clear that throughout said statute a hearing pursuant to notice is required in order to give all parties interested an

opportunity to present their case fully. It contemplates the taking down of testimony by a reporter so that a complete transcript may be available in case an appeal is taken to the Circuit Court for review. It is further pointed out that Section 63-3008, Burns' 1951 Repl., being Section 8 of said Act, reads as follows:

> "Such agency is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common-law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports such agency's determination. Every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every person who is a party to such proceedings shall have the right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the state determined by the agency."

It is further pointed out that Section 63-3023, Burns' 1951 Repl., being Section 23 of said Act provides as follows:

> "Notwithstanding the provisions of this or other acts no agency shall be required to hold hearings when the parties in interest have failed to appear or answer a complaint or charge or other process."

In answer to your first question, I am of the opinion that in all cases it is the best policy that a matter be set down to a hearing pursuant to notice. However, I feel that should the parties by proper stipulation of fact waive their rights to a formal hearing and submit the matter to the Hearing Agency upon such stipulation of facts that the agency could go ahead and make its determination, in which event the stipulation of facts and matters showing such waiver would be incorporated with all the other papers in the proceedings and constitute the transcript for the purpose of an appeal to the Circuit Court.

I am of this opinion for the reason that such practice is uniformly followed even in strict judicial proceedings and it is clear that parties who request that such matters be determined on such stipulation of facts instead of such formal hearing could not predicate the lack of a formal hearing as an assignment of error on an appeal, for in that event they would be a party thereto and would have invited any such alleged error.

However, I do not feel in this particular instance that you are warranted in going ahead without a formal hearing pursuant to notice as required by the Administrative Adjudication Act, in view of the fact, that some of the parties are insisting on a formal hearing. In addition, the foregoing first question assumes knowledge on your part that the agreed stipulation of facts are incomplete, and since you have the authority to require a hearing. In view of this fact it would seem incumbent upon you to set the matter for hearing so that you may make a determination from the full facts.

The foregoing obviates the necessity of any answers to your questions number 2, 3, 4 and 5. However, questions 2, 3 and 4 are, in fact, satisfied by my answer to your first question. Question number 5 is not too clear—the Administrative Adjudication Act consists of some thirty sections, it is a detailed and comprehensive statute covering all phases of administrative adjudication, and certainly a stipulation of facts could not take the place of all the purposes of this act. If you mean, "could a stipulation of facts suffice so far as evidence to be considered by the agency," this question has been answered by my answer to your question number 1.